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TO BE INTRODUCED INTO THE MUSCOGEE (CREEK) NATIONAL COUNCIL

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INTRODUCED BY: Office of the Principal Chief

SPONSOR(S): Robert Hufft

COMMITTEE ON: Business, Finance & Justice

CLASSIFICATION: 16-Executive Branch

A LAW OF THE MUSCOGEE (CREEK) NATION REPEALING MCNCA TITLE 16, CHAPTER NINE ENTITLED "MUSCOGEE (CREEK) NATION TRIBAL EMPLOYMENT RIGHTS OFFICE ACT AND REPLACING IT WITH A NEW CHAPTER NINE ENTITLED "MUSCOGEE (CREEK) NATION CONTRACTING AND EMPLOYMENT SUPPORT ACT" UNDER THE SECRETARY OF THE NATION AND COMMERCE

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. NEW LAW. The following new law shall be codified in Title 16, Chapter 9 of the Code of laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Law of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any manners in which sections, articles, chapter and sub-chapters are designated in this law in order to be consistent with the format in the Code of Law published in 2010 By West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Law; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law.

**TITLE 16. EXECUTIVE BRANCH**  
**CHAPTER 9. MUSCOGEE (CREEK) NATION**  
**CONTRACTING AND EMPLOYMENT SUPPORT ACT**

**§ 9-101. Title**

This Act shall be known and cited as the Muscogee (Creek) Nation Contracting and Employment Support Act.

## **§9-102. Purpose**

The Purpose of this title is to encourage the employment of “Muscogee (Creek) citizens and citizens of other federally recognized Tribes” (hereinafter “citizens”) and to assist in and require the employment of citizens, and to prevent discrimination against citizens in the employment practices of employers who are doing business with the Muscogee (Creek) Nation in Muscogee (Creek) Nation Country or in such jurisdiction as is Provided in a Cooperative agreement between the Muscogee (Creek) Nation and another government.

## **§9-103. Definitions**

- A. “Administration” shall mean the Executive Branch of the Muscogee (Creek) Nation as provided in the Muscogee (Creek) Nation Constitution.
- B. “Muscogee (Creek) Nation Indian Country” shall mean all and held in trust or subject to restrictions by the United States for the Muscogee (Creek) Nation, or land within the original boundaries of the Muscogee (Creek) Nation and held in trust or subject to restrictions for an individual, and all land held by Muscogee (Creek) Nation or its entities, in fee simple, and any other land within the jurisdiction of the Muscogee (Creek) Nation which land comes within the definition of “Indian Country” as defined in 18 U.S.C. § 1151.
- C. “Core Crew” shall mean owner of the firm, or an employee of a company who is in supervisory or other key position that the employer would face a serious financial damage of loss if that position were filled by a person who had previously worked for the employer, contractor, or subcontractor.
- D. “Covered contract” means any contract between any department or office of the Nation, including all commercial enterprise and independent agencies, and any employer for goods or services in the amount exceeding \$10,000.
- E. “Debarment List” shall be list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws with any department or entity of the Nation.
- F. “EEOC” shall mean the Equal Employment Opportunity Commission of the United States.
- G. “Employer” shall mean the Nation, tribal government, all commercial and enterprise entities, all independent agencies, and any other person, company, contractor, sub-contractor or other entity located in or on Muscogee (Creek) Nation Indian country or engaged in work with the Muscogee (Creek) Nation, its entities or Wholly-owned corporations who employs at least one individual.
- H. An employer is “engaged in work” if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Muscogee (Creek) Nation, its entities and wholly-owned corporations and or the work is performed on Muscogee (Creek) Nation Indian Country.
- I. “Indian” shall mean a person who is an enrolled citizen of a Federally Recognized Indian Tribe.
- J. “Indian organization” shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body.

- K. “Indian-owned economic enterprise” shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent (51%) of the enterprise, and the ownership shall encompass active operation, control, and manage the enterprise.
- L. “Indian Tribe” means an Indian Tribe, pueblo, band, Nation or other organized group or community, including any Alaska Native Claims settlement Act (85 Stat. 688,43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- M. An employer is “located in or on the Muscogee (Creek) Nation” if, during any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Muscogee (Creek) Nation Indian Country.
- N. “Major Muscogee (Creek) Nation Employer” shall mean a business either Indian Owned or not that employs at least fifty (50) Muscogee Citizens as either part of the core crew or project crew or has at least 75% of its entire workforce composed of Muscogee citizens as certified by the Contracting and Employment Support Office. A business maybe certified as Indian Owned, Major Muscogee (Creek) Employer, or both.
- O. “Nation” shall mean the Muscogee (Creek) Nation.
- P. “Tribal citizens” or “citizen” shall mean any person who is a duly enrolled citizen of the Muscogee (Creek) Nation or other Federally Recognized Tribe, unless the context clearly indicates otherwise.
- Q. “Contracting and Employment Support” shall mean the Contracting and Employment Support Office.
- R. “Contracting and Employment Support Staff” shall mean employees hired by the Contracting and Employment Support Office to carry out the functions of this Act.

**§ 9-104. Establishment and Name**

There is hereby created the Contracting and Employment Support Office. The Contracting and Employment Support Office, under the Secretary of the Nation and Commerce, shall administer the employment rights of the program of the Muscogee (Creek) Nation in accordance with this Title.

**§ 9-105 Powers and Duties**

The Contracting and Employment Support offices shall have the authority to carry out day-to-day operations of the Office, and to enforce this law. The Contracting and Employment Support Office shall have the following powers and duties:

- A. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of the contracting and Employment Support Offices. The Contracting and Employment Support Office may adopt EECO guidelines or may adopt other requirements to eliminate employment barriers unique to Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes in Indian Country.

- B. To operate funding from federal, state and other sources to supplement National council appropriations as delegated by Administration.
- C. To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and the Contracting and Employment Support Office activates, subject to National Council approval, and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreements.
- D. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, as well as any and all Muscogee (Creek) nation departments to accomplish the goals of this law
- E. To require employer to establish or participate in job training program as the Contracting and Employment Support Office deems necessary to increase the pool of Muscogee (Creek) citizens and citizens of other Federally Recognized Tribe eligible for employment.
- F. To establish and administer a tribal job bank and require employers to use it.
- G. To prohibit employers from using discriminatory job-qualifications criteria or personnel requirements that purposely bars Muscogee (Creek) citizens and citizens of Federally Recognized Tribes eligible from employment.
- H. To engage in the process of certifying businesses as Indian-owned economic enterprises” with documented evidence of at least 51% ownership, control and management of the business to determine whether business may be given Indian preference.
- I. To determine and assess an application fee of not more than \$50.00 to business seeking certification. Upon certification, to determine to be “Indian owned economic enterprise.” Also, to annually determine and assess a re-certification fee to those enterprises.
- J. To direct inspection of regulated sites and determine compliance with rules, regulations, and/or contract requirements.
- K. To facilitate agreements with union to insure union compliance with this Title.
- L. To require employers to give preference to qualified Indian-owned economic enterprise that meet the regular Procurements requirements in the reward of contracts and subcontracts.
- M. To refer applicants and participant to counseling programs to assist Muscogee (Creek) citizens in obtaining and retaining employment.
- N. To require employers to submit reports and take all action deemed necessary by the Contracting and Employment Support Office for the fair and vigorous implementation of this law.
- O. To negotiate cooperative agreements, subject to National Council Approval, with employment rights agencies to eliminate adverse discrimination against Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes.
- P. To take such actions as are necessary to achieve the purposes and objective of the Muscogee (Creek) Nation employment rights established in this Title.

- Q. To publish a listing of certified “Indian-owned economic enterprises” on a quarterly basis.
- R. To review and propose changes to this Title and related rules, regulations, policies and guidelines annually and submit said changes to the Secretary of the Nation and Commerce for approval and upon approval by Tribal Resolution of the Nation Council.
- S. To hold hearings in accordance with this chapter.
- T. To register and keep file of complaints concerning certified, Indian-owned economic enterprises and with individuals and companies doing business with the Muscogee (Creek) Nation.
- U. To issue and assess fees for work Permits which shall be obtained for all non-Indian employees of a covered employer when there is otherwise an eligible and qualified Indian applicant available.
  - 1. Any employer, as defined in this law shall be required to pay a work permit fee of twenty-five Dollars (\$25.00) per employee per day for non-Indian employees hired for the project, that are in addition to the core crew, if the employer hires a non-Indian employee when otherwise there is a qualified Indian applicant available.
  - 2. Each such employer shall be required to submit a core crew list to the Contracting and Employment Support Office.
  - 3. Once the core crew list is submitted, the Contracting and Employment Support Office will confirm the essential employees the vendor has listed.
  - 4. If the Contracting and Employment Support Office has identified Qualified Muscogee (Creek) citizens and citizens of other Federally Recognized Tribe that can be used for non-Indian Employees it shall require the employer to place the qualified tribal citizen.
  - 5. The contracting and Employment Support Office is also authorized to administer other fees and penalties as provided in this law.

**§ 9-106. Adoption of rules, regulations, policies and guidelines**

The Secretary of the Nation and Commerce, the Contracting and Employment Support Office and its staff shall, within sixty (60) days of enactment of this legislation, adopt detailed rules, regulations, policies and guidelines to fully implement this Title and the purposes and responsibilities of the contracting and Employment Support Office and submit to Principal Chief and National Council for approval by Tribal Resolution.

**§ 9-107. Job Bank**

- A. The contracting and Employment Support Office shall create a job bank and shall maintain a listing of individuals and their skills to be utilized by the Contracting and Employment Support Office when filling job vacancies that have been negotiated with employers covered by this law.
- B. Employers covered under this law shall be required to utilize the Job Bank and comply with the Muscogee (Creek) Nation Contracting and Employment Support Office Act and policies and procedures established under this law. Preference shall be given to Qualified Muscogee (Creek) citizens as first preference.

- C. Employers covered under this law do not have to hire or employ a job bank participant who is not qualified for the open position. This decision should be made in a good faith effort and the employer shall have valid reason with documentation for not hiring a job bank referral.
- D. Employers covered under this law shall notify the Contracting and Employment Support office of all job openings and shall submit to the Contracting and Employment Support Office job description, application forms and other relevant information to comply with goals of this law. If an employer advertises the job position, the advertisement shall state that preference will be given.

**§ 9-108. Preference requirements**

- A. All employers are required to give preference to Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes in hiring, promotions, training, and all other aspects of employment, contracting, or sub-contracting , and shall comply with this Title and the rules, regulation and order of the contracting and Employment Support Office.
- B. The Muscogee (Creek) Nation government is an “employer” for the purpose of this Title and any of its business entities shall be an employer for the purpose of this title.
- C. However, if potential contracting is otherwise equally qualified to complete the relevant contract work and respective bid are otherwise equal, the Muscogee (Creek) Nation, its entities and wholly owned corporations shall apply a preference for Indian-owned economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available; when the purchase can be made from available federal procurement sources such as the General Services Administration or the Veteran’s Administration; when more favorable pricing may be obtained; when the order meets the requirements of a Sole Source Request as defined in applicable procurement policy and procedure; or in an emergency situation as determined by the Principle Chief.
- D. A contractor shall extend a preference to qualified individuals with respect to hire each and every employment position utilizing the Muscogee (Creek) Nation Contracting and Employment Support Office job bank. If the Contractor, Sub-Contractor and the Contracting and Employment Support Offices are unable to fill the job positions with qualified employees after applying the preference provisions, then the job positions may be filled by other individual.
- E. Preference shall be given in the following order.
  - 1. First Preference shall be given to Muscogee owned businesses that are Major Muscogee Employers.
  - 2. Second Preferences shall go to Muscogee Owned Businesses.
  - 3. Third Preference shall go to businesses that are certified as Indian Owned and that are Major Muscogee Employers.
  - 4. Final Preference shall go to those businesses that are certified as Indian Owned.
  - 5. Any contract awarded to a general contractor may be subcontracted, provided that the Preference requirements stated in this law apply, regardless of the level of subcontracting

activity. Failure to apply Preference requirements to subcontract shall be deemed by the Contracting and Employment Support Office a violation of this law.

6. The Muscogee (Creek) Nation Administration may create procurement and contracting policies and procedures for application of said Preference. The Muscogee (Creek) Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

- F. Nothing shall require the Muscogee (Creek) Nation to contract with or hire any Indian-Owned economic enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The Muscogee (Creek) Nation procurement and/or contracting offices may maintain a list of entities which have provided poor performance or unsatisfactory work or which have engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

G. The Nation and its entities shall maintain a “Debarment List” which shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. Nothing shall require the Nation to contract with or hire any economic enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. Procurement offices shall develop policies and procedures to define poor performance of a contractor/ employer. Documentation of poor performance shall be available and provided to the contractor upon request. The procurement offices shall forward the names of any certified Indian Owned Businesses determined to have poor performances to both the Contracting and Employment Support Office for technical assistance and improvement.

1. Debarment list, Annual Certification; in compiling the debarment list the Contracting and Employment Support Office shall require, on an annual basis, Employers to certify;
  - a. Compliance with the following laws (if applicable to the employer) and any other such laws deemed appropriate by the Contracting and Employment Support Office: Title VII of the Civil Rights Act, Equal Pay Act, Occupational Health and Safety Act, Davis-Bacon Act; National Labor Relations Act, Muscogee (Creek) Nation Minimum Wage Act and Muscogee (Creek) Nation Contracting and Employment Support Act.
  - b. Whether the Employer is currently the subject of any investigation by any tribal, state or federal government agency or the subject of any lawsuit in Any tribal, state, or federal court, concerning an allegation that the employer violated any law set forth above.
2. The period of Debarment by the Contracting and Employment Support shall be for a period of no less than 2 years.

- H. The Contracting and Employment Support Office shall address complaints of violations of the law or the Contracting and Employment Support Office Rules; and, should there be any unresolved violations by Departments of the Nation or its Business entities, the Contracting and Employment Support Office shall issue reports of non-compliance to the Principal Chief, National Council and applicable Boards.

#### **§ 9-109. Preference in contracting and subcontracting**

In the award of contracts or subcontracts, whenever feasible, employers shall give preference to Indian organizations and to Indian-owned economic enterprise as defined in this Title. The Contracting and

Employment Support staff shall maintain and publish a list of Indian organizations and Indian-owned economic enterprises which shall be supplied to the employers for their use.

**§9-110. Preference in Promotions**

Every employer shall, in accordance with the Contracting and Employment Support regulations, giving Muscogee (Creek) citizens and citizens of other Federally Recognized preferential consideration for all promotion opportunities and shall encourage Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes to seek such opportunities.

- A. Primary preference to Muscogee (Creek) citizens
  
- B. Second preference to other Tribal citizens

**§9-111. Preference in employment of students**

Employers shall give Muscogee (Creek) students and other students who are citizens of a Federally Recognized Tribal preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer, and vacation employment for Muscogee (Creek) students and other citizens of Federally Recognized Tribes students.

**§ 9-112 Establishment and review of numerical goals for employment generally**

- A. The Contracting and Employment support Office may establish the minimum number of Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes each employer shall employ on its work force during any year that the employer or any of its employees are located or engaged in work within Muscogee (Creek) Nation Indian Country. Numerical goals may be set for each craft, skill, job classification, etc. used by the employer and shall include, but not be limited to, administrative, supervisory and professional categories. The goals shall be expressed in terms of man-hours worked by the employer's work force in the job classification involved.
  
- B. For both new and existing employers, the goals shall be reviewed by the Contracting and Employment Support staff at least annually and shall be revised as necessary to reflect changes in the number of Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes available or changes in employer hiring plans. Each employer shall submit a monthly report to Contracting and Employment Support Office on a form provided by the Contracting and Employment Support staff, including the number of Muscogee (Creek) citizens and other Federally Recognized Tribes in the employers work force, the progress towards the Employer's goals, all persons hired or fired during the month, the job positions involved, and other information required by the Contracting and Employment Support Office.

**§9-113. Participation in Training programs**

- A. The Contracting and Employment Support Office may establish training programs for all departments, manager and employees for the Nation that are required to implement the provisions of this Title to ensure compliance and knowledge of the process required by law.
  
- B. Employers may be required by the Contracting and Employment Support Office to participate in training programs to assist Muscogee (Creek) citizens and other citizens of a Federally Recognized Tribe ("citizens") to become qualified in the various job classifications used by the Employer.

The ratio of citizen trainees to fully qualified workers shall be set by the Contracting and Employment Support Office after consultation with the employer.

**§ 9-114. Establishment by the Contracting and Employment Support staff of counseling and other support programs; Cooperation by employers**

The contracting and Employment Support Office may establish counseling and other supported programs to assist Muscogee (Creek) citizens of other Federally Recognized Tribes in obtaining and training employment. Every employer shall be required to cooperate with the Contracting and Employment Support Office regarding such counseling and support programs.

**§ 9-115. Use of job qualification criteria and personnel requirements by employers**

Employers are prohibited from using job-qualification criteria or personnel requirements which bar Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes employment unless such criteria or requirements are required by business necessity.

**§ 9-116. Implementation of layoffs and reductions in force by employers.**

In all layoffs and reductions in force, employers shall maintain the required ratio of Muscogee (Creek) citizens and other citizens of other Federally Recognized Tribes employees.

**§ 9-117. Duties of contractors and subcontractors; liabilities of employers for violations of by contracting and subcontractors**

The Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes (Indian) preference requirements contained in this Title shall be binding on all contractors and subcontractors of employers, regardless of tier, and shall be deemed a part of all contract and subcontract specifications. The employer shall be subject to penalties provided herein for violation if the contractor or subcontractor fails to comply

**§9-118. Establishment and administration of job bank; Recruitment and hiring of personnel by employers**

The Contracting and Employment Support Office may establish and administer a Job Bank to assist employers in placing Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes in job positions. An employer may recruit and hire workers from whatever process the employer chooses, as long as the employer complies with this Title and Indian job preference regulation and agreements pertaining to the employer.

**§ 9-119.Prohibition on brokering and fronting services**

No Indian entity shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or sub-contract when in fact such management control is exercised by a non-Indian entity is acting as front or brokering out service

**§ 9-120. Funds**

All funds from application, certification, recertification, and employer fees and other sources collected by the Contracting and Employment Support Office shall be properly accounted for and deposited at least

monthly into accounts established for the Contracting and Employment Support Office with the Office of the Controller. All funds from such account shall be used for purposes for which Contracting and Employment Support offices was established and carry out its powers and duties.

**§ 9-121. Duties of unions generally.**

Every union with collective bargaining agreement with an employer shall file a written agreement stating that the union will comply with this Title and rules, regulations and orders of the Contracting and Employment Support Office. Until such agreement is filed with the Contracting and Employment Support Office, the employer may not commence work within Muscogee (Creek) Nation Indian Country.

**§ 9-122. Contents of union agreements**

Every Union agreement with an employer or filed with the Contracting and Employment Support Office shall provide:

- A. Indian preference. The union will give preference to Muscogee (Creek) citizen and citizen of other Federally Recognized Tribes in job referrals regardless of which union referral list they are on.
- B. Cooperation with the Contracting and Employment Support staff. The Union will cooperate with the Contracting and Employment Support Office in all respects and assist in the compliance with and enforcement of this Title and related regulations and agreements.
- C. Training programs. The Union will establish a journeyman upgrade and advance apprenticeship program.
- D. Temporary work permit. The union will grant temporary work permits to Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes who do not wish to join the union.

**§ 9-123. Model union agreement**

The Contracting and Employment Support Office staff will provide a model union agreement for use be all unions who have collective bargaining agreements with any employer.

**§ 9- 124. Unions and union activities**

- A. Nothing herein, nor any activities by the Contracting and Employment Support Office authorized hereby, shall constitute official Muscogee (Creek) Nation recognition of any union or endorsement of any union activities within the Muscogee (Creek) Nation. Nothing herein bars any employer, Muscogee (Creek) Nation or its entities, from recognizing any union.
- B. Neither the Contracting and Employment Support Office, including any employer or agent thereof, nor any Muscogee (Creek) Nation entity, including any employee or agent thereof, shall engage in any activity constituting opposition to or endorsement of any Union activities among employees of any Employer covered by this law. Nothing herein shall restrain any elected official of the Muscogee (Creek) Nation from endorsing or opposing such Union activities.
  - 1. Any prohibition against endorsement of any Union activities in this Section shall not include the provision of any assistance to any Muscogee (Creek) Nation citizen to

utilize any apprentice or job training program operated by any Union or Union affiliated entity.

**§9-125. Filing of complaints by the Contracting and Employment Support Office and proceedings there on generally**

If the Contracting and Employment Support staff has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this Title or any rules, regulations or orders of the Contracting and Employment Support Act, it may file a complaint with the Contracting and Employment Support Director and notify such party of alleged violations. The Contracting and Employment Support Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the Contracting and Employment Support Office may impose penalties as provided in § 9-130 herein. Should any entity fail to comply with orders of the Contracting and Employment Office, the Contracting and Employment Support Office may pursue a civil legal action against the entity in the Muscogee (Creek) Nation District Court.

**§9-126. Filing of complaints by Muscogee (Creek) citizens and citizens of other Federally Recognized Tribes and proceeding thereon generally; Penalties for retaliatory actions by employers against employees filing complaints**

- A. If any Indian believes that an employer has failed to comply with this Title or rules, regulations or orders of the Contracting and Employment Support Office, or if the Indian believes he or she has been adversely discriminated against by an employer because he or she is Indian, the Indian may file a complaint with the Contracting and Employment Support Office specifying the alleged violation. Upon receipt of the complaint, the Contracting and Employment Support Office shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or the Contracting and Employment Support Office may take further action as provided for by law.
- B. If any employer fires, layoffs or penalizes in any manner any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided by Section 9-130 of this Title.
- C. Nothing in this Title shall prohibit the aggrieved Indian from pursuing from the employer other remedies available by law.
- D. This Title does not provide any cause of action for employees of the Muscogee (Creek) Nation its entities or wholly owned corporations.

**§9-127. Conduct of Hearings**

If any employer or person feels aggrieved by a decision made by the Contracting and Employment Support Office they may appeal that decision to the Contracting and Employment Support Appeals Board. The Contracting and Employment Support Appeals Board shall hold a hearing in accordance with this law and will either confirm or deny the Contracting and Employment Support Office decision.

- A. Hearings shall be governed by the following rules and procedure:

1. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.
  2. The Appeals Board may have the advice and assistance at the hearing of counsel which shall be provided by the Nation.
  3. The chairman of the Board or the vice-chairman shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion.
  4. The Hearing may be adjourned, postponed and continued at the discretion of the Board
- B. At the final close of the hearings, the board may take immediate action or take the matter under advisement.
- C. The Board shall notify all parties forty-five (45) days after the last hearing or of its decisions in the matter.
- D. The Board shall conclude this process within ninety (90) days of the request for a hearing.

### **§ 9-128. Notice of Hearings**

- A. The Contracting and Employment Support Appeals Board shall have the power and duty to hear employer appeals of Contracting and Employment Support Office decisions denying certification of the employer as an Indian owned economic enterprise. The Contracting and Employment Support appeals Board shall have the power to either affirm or reverse the Contracting and Employment Support Office Certification decision, but will not have the power to award any other form of remedy in the cases brought to this title.
- B. The Contracting and Employment Support Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Contracting and Employment Support Appeals Board.
1. If a hearing is requested by the Board, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented.
  2. The notice shall advise such parties of their right to be present at the hearing, to present the testimony of witnesses and other evidence and to be represented by counsel at their own expense.

### **§ 9-129 Appeals from decisions of Contracting and Employment Support Appeals Board**

There shall be no right of further appeal of any claim beyond the Contracting and Employment Support Appeals Board.

### **§ 9-130 Penalties for Violations of chapter and rules, regulations or orders**

- A. Any employer, contractor, subcontractor or union who violates this Title or rules, regulations or orders of the Contracting and Employment Support Office shall be subject to penalties for the violation, including, but not limited to:

1. Denial of the right to commence or continue business within the jurisdiction of the Muscogee (Creek) Nation.
  2. Suspension of operations within the jurisdiction of the Muscogee (Creek) Nation.
  3. Payment of back pay and damages to compensate any injured party.
  4. An order to summarily remove employees hired in violation of this Title or rules, regulations or orders of the Contracting and Employment Support Office.
  5. Imposition of monetary civil penalties.
  6. Prohibition from engaging in future operations within the Muscogee (Creek) Nation boundaries.
  7. An order requiring employment, promotion, and training of Muscogee (Creek) citizens and citizens of other Federally Recognized tribes injured in the violation.
  8. An order requiring changes in procedures and policies necessary to eliminate the violation.
  9. An order making any other provision deemed necessary to alleviate, eliminate, or compensate for any violation.
- B. The maximum monetary penalty which may be imposed is Five Thousand Dollars (\$5,000) for each violation. The penalties will be graduated as follows:
1. The first violation will incur a fine of Two Hundred Dollars (\$200).
  2. The second violation will incur a fine of One Thousand Dollars (\$1,000).
  3. The third violation will incur a fine of Five Thousand Dollars (\$5,000).
- C. Each day during which a violation exists shall constitute a separate violation.
- D. Monetary penalties assessed by the Contracting and Employment Support Office may be doubled if it is shown that the violation occurred egregiously or with reckless or wanton behavior.
- E. Attorney Fees and Cost of pursuing or defending an action of the Contracting and Employment Support Office may be awarded to the prevailing party.

### **§ 9-131 Time Computations**

In computing any period of time prescribed or allowed by this law, the day of the act, default, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall not be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Muscogee (Creek) Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which even the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Muscogee (Creek) Nation, or any other day, when the receiving office does not remain open for public business until 4:00 p.m. when the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Muscogee (Creek) Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

### **§ 9-132. Notification of prospective and current employers of obligations imposed by Title and rules, regulations and orders of the Contracting and Employment Support Office**

- A. The Contracting and Employment Support Office shall notify all employers of this Title and of the employer's obligation to comply herewith. All bid announcements issued by a tribal, federal, state, or other private or public entity shall contain a statement that the successful bidder will be

obligated to comply with this Title and all rules, regulations and orders of the Contracting and Employment Support Office.

- B. All Muscogee (Creek) Nation agencies responsible for issuing business permits for activities within the Muscogee (Creek) Nation or otherwise engaged in activities involving contact with prospective employers within the Muscogee (Creek) Nation shall be responsible for advising such prospective employers of their obligations under this Title and rules, regulations and orders of the Contracting and Employment Support Office.
- C. The Contracting and Employment Support Office shall send a copy of this Title to every employer doing business with the Muscogee (Creek) Nation.

**§9-133. Filing of reports and other information by employers; Conduct of on-site inspections and investigations by the Contracting and Employment Support Office; Inspections and copying of records by the Contracting and Employment Support Office**

- A. Employers shall submit reports, and other information requested by the Contracting and Employment Support Office.
- B. The Contracting and Employment Support Office and its representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Title and the rules, regulations, and orders of the Contracting and Employment Support Office.
- C. The Contracting and Employment Support Office shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor, and shall have a right to speak to work and conduct investigations on job sites.

**§ 9-134. Severability**

The provisions of this Title are severable and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this law.

**§ 9-135. Contracting and Employment Support Appeals Board**

The Contracting and Employment Support Appeals Board of the Muscogee (Creek) Nation shall consist of an attorney from the office of the Attorney General, a member of the National Council, the Secretary of the Nation and Commerce, the Secretary of Interior Affairs, and the Secretary of Housing.

**SECTION TWO. REPEALER.** MCNCA Title, 16 Chapter 9, Entitled "Muscogee (Creek) Nation Tribal Employment Rights Office Act" is hereby repealed.

**SECTION THREE. EFFECTIVE DATE.** This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

